IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.693 OF 2000.

M/s.A.V.Apte & Company ...Appellants
Versus
Shri Suresh Gangaram Pawar ...Respondent

Shri T.D.Deshmukh for the Appellants.

CORAM : ABHAY S.OKA, J.
DATED : 26th November, 2007.

P.C.:

1. My attention has been invited to affidavit filed by the Appellant No.1B dated 18th November, 2005. He has filed the said affidavit for himself and in his capacity as the constituted attroney of the Appellant Nos.1A,1C and 1D. He has sought permission to withdraw the Second Appeal. However, in the affidavit it is stated that permission may be granted to the Appellants to withdraw the amount deposited in the trial Court.

2. The impugned judgment and decree of the trial Court shows that permission has been granted to the original first Defendant to withdraw a sum of Rs.88,000/-.

3. Perusal of the judgment of the trial Court shows that names of the first and second Defendants were deleted. The cause-title also shows that the third Defendant is M/s.A.V.Apte and Company through proprietor Shri Arun Vaman Apte. Thus the third defendant was the only defendant at the time of the decree passed by the

trial Court. The present Appellants are the legal representatives of the said Arun Vaman Apte who have been brought on record in this Appeal.

4. It will be necessary to refer to the finding recorded by the trial Court. The trial Court has held that only the original Defendant No.3 has right to execute the agreement for sale, to hand over the possession and to execute the sale deed. The decree is passed directing the original third Defendant to execute the sale deed and to hand over possession. The Appeal preferred by the third Defendant against the decree of the trial Court has been dismissed. The Appellants, in view of the said affidavit, now desire to withdraw the Second Appeal. None appears for the Respondent. Considering the findings recorded by the Courts below, as the Appellants are withdrawing the Appeal by accepting the decrees passed by the Courts below, they are entitled to withdraw the amount of Rs.88,000/- deposited in the trial Court which is referred to in the operative part of the decree of the trial Court.

5. In view of this position, the Appeal is dismissed as withdrawn. The Appellants are entitled to withdraw a sum of Rs.88,000/- deposited in the trial Court by the Respondent. If the said amount is invested in fixed deposit, the trial Court will permit the Appellants to withdraw the interest accrued thereon.

There will be no order as to costs.

JUDGE